(19,248.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 196.

J. B. CARO, J. C. KEYSER, AND JOSEPHINE CARO, BY HER NEXT FRIEND, A. V. CARO, PLAINTIFFS IN ERROR,

vs.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from circuit court of Escambia county	2	1
Appeal	2	1
Assignment of errors	3	2
Notice of appeal, &c	4	2
Directions as to record on appeal	5	3
Petition, April 17, 1901	6	3
Exhibit A—Decree of January 17, 1889	9	5
B—Order of April 4, 1887	14	9
C—Order of March 5, 1887	15	10
Statement of disqualification by Judge Maxwell	17	11
Answer of Wm. Fisher	18	11
Answer of complainants	20	13
Demurrer to answer	21	13
Statement of Judge Maxwell declining to act	21	14
Decree denying petition, July 13, 1901	22	14
Petition, June 27, 1901	23	15

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 23, 1904.

	Original.	Print
Exhibit A—Record of marriage of Jas. F. McClellan to Adelaid M. Yonge	25	16
Direction to clerk as to addition to record on appeal	26	17
Stipulation as to record	27	18
Clerk's certificate	28	18
Submission	29	19
Judgment	29	19
Petition for writ of error	30	19
Order allowing writ of error	34	22
Bond on writ of error	36	23
Clerk's certificate	39	25
Return to writ of error	40	25
Writ of error	41	26
Citation	42	27
Proof of service of citation	43	28
Certified copy of judgment	44	28

1 Be it remembered that on the 3rd day of January, A. D. 1901, at a regular term of the supreme court of the State of Florida, came the appellants J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro, by counsel, and filed in the clerk's office of the supreme court of Florida a transcript of the record of the proceedings and decree of the circuit court of Florida for Escambia county in a certain cause wherein John B. Caro, Joseph C. Keyser and Josephine Caro by her next friend A. V. Caro were petitioners, and W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston and Abida R. Booth were respondents, and of the appeal therein from the decree of the circuit court therein rendered, which said transcript of the record of the cause aforesaid and subsequent proceedings to decree and appeal therefrom is in the words and figures as follows, to-wit:—

2 First Judicial Circuit of Florida, Circuit Court of Escambia County.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. YONGE, Sr., *et al.*, Plaintiffs,
vs.
J. C. PETTERSEN, J. C. KEYSER, JNO. B. CARO, ET AL., Respondents.

Now comes the respondents, J. B. Caro, J. C. Keyser, and Josephine Car- by her next friend A. V. Caro and apply for and enter this their appeal from an order and decree made herein by Honorable R. M. Call, judge of the fourth judicial circuit of Florida, on the 13th day of July, 1901, denying the petition of the said J. B. Caro, J. C. Keyser and Josephene Caro, by her next friend A. V. Caro to vacate certain interlocutory and final decrees alleged in said petition and made by Honorable J. F. McClellan, judge of the first judicial circuit of Florida, on the 5th day of March, 1887, and on the 4th day of April, 1887, and on the 17th day of January, 1889.

To the supreme court of the State of Florida, January term of 1902.

BENJ. S. LIDDON,
Attorney for Petitioners.

(Filed Oct. 28, 1901.)

3 First Judicial Circuit of Florida, Circuit Court of Escambia County.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. YONGE, *et al.*, Plaintiffs,
vs.
J. C. PETTERSEN, J. C. KEYSER, JNO. B. CARO, ET AL., Respondents.

The petitioners, J. C. Pettersen, J. C. Keyser and Jno. B. Caro, assign the following errors in the judgment of the circuit court:—

First. The court erred in denying the petition of the petitioners to vacate the said judgments and decrees in the petition mention- and described, which were entered by the Honorable J. F. McClellan on the days as alleged in said petition.

BENJ. S. LIDDON,
Attorney for Petitioners.

4 First Judicial Circuit of Florida, Circuit Court of Jackson County.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. YONGE, Sr., *et al.*, Plaintiffs,
vs.
J. C. PETTERSEN, J. C. KEYSER, JNO. B. CARO, ET AL., Respondents.

To Hon. W. A. Blount & William Fisher, attorneys for the plaintiffs in the above stated case:

Attached hereto is a copy of the assignment of errors herein, also a copy of the written directions to the clerk for making up the transcript of record on appeal in this case.

BENJ. S. LIDDON,
Attorney for Respondents.

I, Ben. H. Liddon, general law clerk in the law office of Benjamin S. Liddon do hereby certify that I have served a true copy of the foregoing papers on Hons. W. A. Blount and William Fisher, attorneys for the plaintiffs in above stated case, this day, by mailing a copy of the same to them in the United States post office in a letters securely sealed, postage fully prepaid and addressed to them at Pensacola, Florida.

October 25th, 1901.

BEN. H. LIDDON,
General Clerk.

5 First Judicial Circuit of Florida, Circuit Court of Escambia County.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. Yonge, Sr., *et al.*, Plaintiffs,
vs.
J. C. PETTERSEN, J. C. KEYSER, JNO. B. CARO, ET AL., Respondents.

The clerk of the court is directed in this case in making up the transcript of record of appeal in which he shall copy and make a part of the transcript of the said record the following papers, to-wit:—First:—The petition and motion of the respondents. Second:—The certificate of disqualification of the judge of the first judicial circuit of Florida. Third:—Answer of the respondents to petition and answer of respondents to motion. Fourth:—Application for the removal of the receiver. Last:—The decree of the court passed the 13th of July, 1901, denying the petition. You will omit the other papers of the case except those which you are directed to copy and make a part of the transcript of the record.

You will proceed on the 9th day of November, 1901, to commence making up the said transcript upon appeal.

BENJ. S. LIDDON,
Attorney for Petitioners.

(Filed Oct. 28, 1901.)

6 In Escambia County Circuit Court, State of Florida. In Chancery.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. Yonge, Sr., *et al.*, Complainants,
vs.
J. C. PETTERSEN, JOSEPH C. KEYSER, JOHN B. CARO, ET AL., Respondents.

To the Hon. E. C. Maxwell, judge of the first judicial circuit court, Escambia county, Florida:

Your petitioners, John B. Caro, Joseph C. Keyser and Josephine Caro, who appears herein by her next friend, Albert V. Caro, respectfully show unto your honor:

1st.

That they are each over the age of twenty-one years, except the said Josephine Caro, who is a minor, under the age of eighteen years, and that they are respondents in the said cause of W. H. Davidson *et al. vs.* J. C. Petterson *et al.*

2nd.

That Hon. James F. McClellan, judge of said court, granted in said cause an alleged interlocutory injunction against your peti-

tioners on the 5th day of March, 1887, and made on the 4th day of April, 1887, an alleged order appointing William Fisher an alleged receiver of the Rivas tract in the city of Pensacola, in said county and State, and on January 17th, 1889, made said alleged interlocutory injunction perpetual and rendered an alleged final decree in the said cause against your petitioners, as shown by certified copies, marked Exhibits "A" and "B" and "C" hereto attached and made a part hereof.

7 3rd.

Your petitioners suggest the death of the said complainants, Peter Knowles, C. C. Yonge, Sr., E. A. Perry and W. D. Chipley, since the 17th day of January, 1899, and that your petitioner, John B. Caro was an infant at the time of the said several orders and decrees, and reached his majority on the 20th day of December, 1900.

4th.

Your petitioners show unto your honor that at the time of the granting of said interlocutory injunction and said order appointing said Fisher as receiver and granting of said alleged perpetual injunction and final decree, the said Judge McClellan was of kin by affinity to the said C. C. Yonge, Sr., a party plaintiff to said cause, the said McClellan having previously intermarried with the sister of the said C. C. Yonge, Sr., and having at the time of said several orders and decrees, living children the issue of said intermarriage of said Judge McClellan and his wife, the sister of said C. C. Yonge, Sr.

5th.

Your petitioners further show unto your honor that they never learned until February 10th, 1901, of the said relationship of said Judge McClellan and C. C. Yonge, Sr.

6th.

Your petitioners submit and state, that by reason of the premises, the said alleged interlocutory and perpetual injunctions and orders of the said Judge McClellan appointing said Fisher as such receiver, and the final decree of said Judge McClellan, are without jurisdiction and of no force or validity, and null and void.

7th.

Your petitioners further show unto your honor that the said Fisher still claims to be such receiver for said Rivas tract.

Wherefore your petitioners pray, that the said alleged interlocutory and perpetual injunctions and order appointing said Fisher as receiver, and the said alleged final decree of said Judge McClellan, be declared of no force or validity and null and void.

8 Your petitioners pray for such other, further and additional relief as may be equitable in the premises.

RICH. H. FRIES,
Solicitor for Petitioners.

STATE OF FLORIDA,
Escambia County.

Personally before me came, Joseph C. Keyser who being duly sworn, says that the allegations in the foregoing petition are true.

JOS. C. KEYSER.

Sworn to and subscribed before me this 17th day of April, A. D. 1901.

MINNIE E. KEHOE,
Notary Public, State at Large.
[NOTARIAL SEAL.]

9 EXHIBIT "A."

In Escambia County Circuit Court, State of Florida.

W. A. BOOTH, THE PENSACOLA CITY CO., W. H. DAVIDSON, WALTER Tate, Personally and as Administrator of Sallie S. Tate, Dec'd; Peter Knowles, C. C. Yonge, Sr., Louis Boley, Pensacola and Atlantic R. R. Co., a Corporation of Florida; A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thos. C. Watson, W. E. Anderson, Alex. Stoddart, N. Thurston, Fannie E. H. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston, Abida R. Booth, Suing for Themselves and Numerous Others,

vs.

J. C. PETTERSEN, OCTAVIA THOMPSON and HENRY J. THOMPSON, Her Husband; James Wilkins, W. B. Runyan, Joseph C. Keyser, Richard H. Fries, Georgianna Isabel Caro, John B. Caro, Theressa E. Caro, Josephine Caro, Mary L. Caro, Irene C. Williams, Matilda Duval, Isabella E. Brosnaham, Geo. O. Brosnaham, Georgianna E. Kirk, John A. Brosnaham, Mary E. Brent and Her Husband, F. C. Brent; D. D. Shuttleworth and Charles Ahrens, John C. Lavallette, J. C. Peterson, as Administrator of E. J. Caro, Dec'd; Geo. Bell, Louis Cobb, Lillie Johnson, Amy Castleberry, Louisa Dean, Louis Ross, Geo. Gammell, Reuben Fresney, Edward Davis, Eugene Cardenas, Ramon Campderos, Andrew Gant, Joseph Rodgers, Jerry Beck, B. L. Carle, Ed Rowe, Cade Shackleford, Beverly Milner, John Wood,
10 Jemima Sunday, Thomas Bagg, Jacob Harrison, Jos. Thompson, and Elizabeth Thompson.

This cause coming on to be heard upon demurrer of R. H. Fries, J. C. Lavallette and J. C. Pettersen, as administrator of the estate of

E. J. Caro, dec'd, to the bill of complaint, and upon motion by complainants for a final decree against the other defendants, except Edward Davis, Lillie Johnson, Geo. Gammell, Eugene Cardenas, Louis Cook, Andrew Gant, Joseph Rogers, John Beck, Edward Rowe, Chas. Lepard, Chs. Rapanel, Cable Shackleford, Beverly Milner, John Ward, Cynthia Humphreys, John Rogers and C. L. Carle, Henry Poinsell, I. H. Watts and Pleas Davis, against whom a final decree has heretofore to wit on May 23rd, 1887, been entered, and it appearing that a decree *pro confesso* for want of pleas answer or demurrer has after due and personal service heretofore, to-wit, Sept. 3, 1888, been duly and lawfully entered against Isabella E. Brosnaham, John A. Brosnaham, Geo. O. Brosnaham, Georgianna E. Kirk, Daniel D. Shuttleworth, F. C. Brent and Mary E. Brent his wife and Charles Ahrens, and counsel for the complainants, and all the other defendants having been heard and their arguments and the pleading and proofs having been considered by this court it is ordered adjudged and decreed.

That the demurrers of the said defendants J. C. Pettersen as admr. of the estate of E. J. Caro, dec'd, R. H. Fries and J. C. Lavallette to the bill of complaint be and are hereby sustained and the bill dismissed as to them.

That the Pensacola City Company, the joint stock association, was prior prior to A. D. 1870 the owner in fee simple of the tract of land in the eastern part of the city Pensacola, Florida, known as the Rivas or Chabaud tract, containing — acres and being in large part of section 8, T. 2, S. R. 29, west according to U. S. Government survey, and the Pensacola City Company a corporation successor to the said joint stock association, and the complainants and its other assigns still are the owners in fee simple thereof as against the
11 defendants and all persons claiming or holding under or by or through the def'ts except as to the portion hereinafter described as the property of J. C. Pettersen and Raman Campderos, and that with the said exception the complainants and the other assigns of the Pensacola City Co. are entitled to the possession of said tract of land.

That defendant J. C. Pettersen has acquired title by the statute of limitation as against the complainant- to that portion of said tract of land occupied by him or his tenants at the beginning of this suit, above more particularly described in the plat and deed attached to the answers of J. C. Pettersen to interrogatories in this suit and that this bill in this cause be and is hereby dismissed as to the said Pettersen at the costs of the complainant-.

That the defendant Ramon Campderos has acquired title as against the complainants since 1870, A. D., by the statute of limitations, as to the portion of said tract of land occupied by him or his tenants at the beginning of this suit or more particularly described in the deed from A. V. Caro and Nancy L. Caro his wife mentioned in his answer to interrogatories in this suit, and that the bill of

complaint in this cause be and is hereby dismissed as to the said Campdero at the costs of the complainants.

That as to the defendants other than the said Pettersen, personally and as administrator of the estate E. J. Caro, R. H. Fries, Ramon Campdero and John C. Lavallette and the defendants against whom a final decree as aforesaid has heretofore been entered, the interlocutory injunction granted and issued on March 5, 1887, be and is hereby made perpetual and that the said defendants and each of them, their attorneys, agents, servants and all persons holding as tenants under them or any of them be and are hereby perpetually enjoined and restrained from interferring with the possession of the complainants or any assigns of the said Pensacola City Company or of the tenants of any of them of the said property or any part thereof, and from assuming or asserting title to the same or any part thereof, from leasing or selling or in any way assuming or attempting to assume any control over the said property or any part thereof
12 from receiving any purchase price or rental for the same or any part thereof from any persom whatsoever, from attorneys, or paying rent to any person other than the complainants or assigns of the Pensacola City Co. or their representatives or assigns—from taking possession of the said tract of land or any part thereof, from refusing to deliver possession of the said property or any part thereof now held by them or any of them to the complainants or either of them upon demand by the compainants or either of them; from cutting or injuring any shade trees or wood or timber upon the said land or any part thereof; from committi*m*g any trespass of any kind whatsoever upon the said property or any part thereof; and from aiding, abetting, assisting, counselling or advising any one in the commission of the before mentioned acts.

That the defendants J. E. Brosnaham, John A. Brosnaham, Geo. O. Brosneham, Georgianna E. Kirk, David D. Shuttleworth, Mary E. Brent and her husband F. C. Brent and Charles Ahrens do pay the costs of the proceedings in this cause against them amounting to $10.50 and that the complainants do have execution against them therefor.

That the defendants other than those aforesaid and those against whom final decree has been taken as hereinbefore mentioned do pay all the other costs of this cause amounting to $397.07 and the fees of the receiver herein amounting to $100.00 and of the guardian *ad litem* John Eagan $25.00 aggregating the sum of $522.07 and upon failure to pay the same within ten (10) days from the date of this decree the complainants shall have execution therefor.

And it appearing from the report of the receiver W. Fisher, Esq. appointed in this cause, that he has collected as said receiver the sum of $249. as rental from occupants of the said tract of land, he is hereby directed to pay the same to the solicitors of the complainants for distribution among the complainants, after deducting therefrom the fees hereinbefore allowed him.

And it further appearing from the report of the said receiver that

numerous persons have been in possession of portions of said tract of land during the said receivership, but have not paid to
13 the said receiver rental in full for said occupation, the said persons are hereby directed and ordered to pay the amount in arrears to the said receiver within twenty (20) days after the notification by the receiver to the — of this *pa* part of the decree and if they do not so pay within said time the said receiver shall report the said delinquents to this court. The names of such persons with the amounts due by them are as follows:

B. L. Carle	3.00	James Williams	17.00
Adam Lennox	19.00	Thomas Hutton	2.00
Jeff Lennox	11.00	Ransom Bailey and Mary Bailey	19.00
Dan Pettersen	8.00	Joe Lennox	9.00
Geo. Lewis	1.00	Polly Alexander	1.00
Henry Williams (white)	1.00	James Taylor	18.00
" (col.)	16.00	Mana Beck	19.00
A. Daniels	14.00	Brooks Crumbs	17.75
Sandy Brown	14.00	Reuben Freeny	16.75
Burke Hamilton	13.50	Wm. Currie	5.00
Lewis Ross	16.00	Nancy Johnson	16.00
J. W. Dean	17.25	Jerry Beck	13.00
Betsy Sunday	15.50	Clem Garner	12.50
Nancy Moreno	5.00	Joshua Edwards	1.00
Ed Davis (col.)	11.00	Joe Davis	1.00
Charles White	12.00	Caroline Lennox	1.00
John Scott	8.00	Peter Lennox	1.00
Phil. Lennox	14.50	Alex Iggins	1.00
Caleb Shepard	4.00	Harry Smith	1.00
Isom Vann	11.00	Thos. Baggs	1.00
Beverly Milner	11.00	Joe Thompson	1.00
Ella Thompson	16.50	John Scott No. 2	19.00

J. F. McCLELLAN, *Judge.*

Jan'y 17, 1889.

14 STATE OF FLORIDA, }
Escambia County. }

I, A. M. McMillan, clerk circuit court in and for said State and county, do hereby certify that the foregoing is a true and correct copy of the original as remains of record in Minute Book H. page 259 of the public records, in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal this 11th day of March, A. D. 1901.

[OFFICIAL SEAL.]

A. M. McMILLAN,
Clerk Circuit Court,
By B. H. BURTON, *D. C.*

EXHIBIT "B."

Circuit Court, Escambia County, State of Florida.

W. H. DAVIDSON ET ALS.
vs.
J. C. PETTERSEN ET ALS.

This cause coming on to be heard on motion by defendants for bond to be given by complainants and also on motion of complainants for the appointment of a receiver, and counsel for the respective parties having argued the same, it is ordered that complainants forthwith enter into a bond in the sum of twenty-five hundred dollars with sureties to be approved by the clerk, conditioned to pay all costs and damages the defendants or either of them have sustained or may hereafter sustain by reason of the granting the injunction heretofore in this cause, if the said injunction shall hereafter be dissolved.

It is further ordered that William Fisher be and he is hereby appointed receiver to take possession of lots and parcels of land and the improvements thereon in the said tract, mentioned in the bill of complaint which have been taken possession — by the said defendants or complainants or either of them and now held by
15 them or their tenants and to preserve and rent the same until the further order of the court.

April 4th, A. D. 1887.
Pensacola, Fla.
(Signed) J. F. McMILLAN,
Judge 1st Jud. Circuit of Florida.

STATE OF FLORIDA,
Escambia County.

I, A. M. McMillan, clerk circuit court in and for said State and county do hereby certify that the foregoing is a true and correct copy of the original as remains of record in Minute Book G, page 504 of the public records of said county in my office.

In testimony whereof I have hereunto set my hand and affixed my official seal this 9th day of March, A. D. 1901.

[OFFICIAL SEAL.] A. M. McMILLAN,
Clerk Circuit Court,
By B. H. BURTON, *D. C.*

EXHIBIT "C."

In Escambia County Circuit Court, State of Florida. In Chancery.

W. H. DAVIDSON ET AL.
vs.
J. C. PETTERSEN ET AL.

This cause coming on to be heard upon the application of the complainants, by their solicitors, for a preliminary injunction, and the bill and exhibits and affidavits filed therewith having been considered,

It is ordered that the defendants, J. C. Pettersen, personally and as administrator of E. J. Caro, deceased, Octavia Thompson, and Henry J. Thompson, her husband, James Wilkins, Wm. B. Runyan, Joseph C. Keyser, Richard H. Fries, John C. Lavallette,
16 Georgianna Isabel Caro, Josephine Caro, Mary L. Caro, Irene C. Williams, Matilda C. Duval, Geo. Bell, Louis Cobb, Lillie Johnson, Amy Castleberry, Louisa Dean, Louis Ross, Geo. Gammell, Reuben Freny, Edward Davis, Eugene Cardenas, Ramon Campderos, Andrew Gant, John Rodgers, Joseph Rodgers, John Beck, C. S. Carle, Chas. Reparel, Ed. Rowe, T. H. Watts, Cable Shackleford, Beverly Milner, Pleas Davis, John Ward, Cynthia Hennessey, Elizabeth Thompson, Jimmy Sunday, Thomas Bugg, John Harris, Henry Poisell and Joe Thompson, each and every one of them, their agents, servants and attorneys, be and are hereby enjoined until the further order of this court, from interferring in any way with the possession of the complainants, or their tenants, or any one else of the Chabeaux or Rivas tracts of land in the city of Pensacola, or of any part thereof; and from assuming title to the same or any part thereof; from leasing or selling or exchanging the same or any part thereof, or any interest therein; from demanding or receiving rent, or compensation for the use of the said tract of land or any part thereof; and from paying rent or compensation for the use of any part thereof to any one other than the complainants or some of them; from taking possession of the said tract or any part thereof; by themselves, their agents or tenants; from cutting or destroying, or disposing of when cut, any shade or ornamental trees, or wood or timber from on said land, or any part thereof; from collecting the proceeds of any sales, or leases heretofore made, of the said tract of land or any part thereof; from committing any trespass of any kind whatsoever upon the said property, and from counselling and advising or aiding the defendants or any one else in the commission of any of the aforesaid acts.

At chambers in Pensacola, Florida, this March 5th, A. D. 1887.

JAMES F. McCLELLAN,
Judge of the 1st Judicial Circuit of Florida.

STATE OF FLORIDA,
Escambia County.

I hereby certify that the foregoing is a true copy from the minutes of Escambia county circuit court.

In witness my hand and seal official, this 5th day of March, A. D. 1887.

[SEAL.]

F. E. DE LA RUE,
Clerk Circuit Court, Escambia County, Fla.

17 In Escambia County Circuit Court, State of Florida. In Chancery.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. Yonge, Sr., *et al.*
vs.
J. C. PETTERSEN, JOSEPH C. KEYSER, JOHN B. CARO, ET AL.

This cause coming on to be heard on the accompanying petition and exhibits thereto attached, I, E. C. Maxwell, judge of said court, hereby certify that I am disqualified from passing on said petition on account of my being a nephew by consanguinity of said W. E. Anderson, a nephew by affinity of said W. H. Davidson, and my wife being the niece of said Peter Knowles' wife.

Pensacola, Florida, April 25th, 1901.

E. C. MAXWELL,
Judge First Jud. Circ't of Fla.

18 In Escambia County Circuit Court, State of Florida.

W. H. DAVIDSON ET AL.
vs.
J. C. PETTERSEN ET AL.

For answer to the rule upon him to show cause why he should not be removed from the receivership in this cause, and why he should not be restrained and enjoined from acting as such receiver, the respondent, William Fisher, says:

1.

Answering the second paragraph of said petition, that the final decree made in the said cause was appealed by the petitioners and others to the supreme court of the State of Florida, and there examined upon its merits, upon a transcript of all the proceedings and record in the court below, and a decree rendered by the said supreme court, affirming the final decree of the said J. F. McClellan:

2.

Answering the third paragraph of the said petition, that for more than ten years prior to the beginning of this suit, the wife of the said J. F. McClellan, the sister of the said C. C. Yonge, Sr., had died.

3.

Answering the fourth paragraph, respondent says that it is not true that the said petitioner, J. C. Keyser, discovered by accident on February 10, 1901, the relationship of said J. F. McClellan to the said C. C. Yonge, but that the petitioner, J. C. Keyser, and his attorney in this petition, Richard H. Fries, Esquire, knew of the said relationship on or before December, 1898, and that the said attorney set up the said relationship as a disqualification in a suit then and there pending in the United States circuit court for the northern district of Florida, at Pensacola.

4.

Answering the fifth paragraph of said petition, respondent
19 says that it is not true that he is collecting rents from any tenants of the petitioners, but it is true that the petitioner, J. C. Keyser, has induced tenants of the respondent to repudiate such tenancy and to hold under the petitioners: That the respondent has been in possession of all the property mentioned in said petition and in said bill, for nine or ten years, except a small part of that adjudicated to J. C. Pettersen, and except a small part held adversely by a third person, which latter part has been in his possession for years last past, and that the petitioners or other persons acting at interest with them have not during said time been in possession of said land until within the past three or four months, when they have made a concerted attempt to secure possession of the said land by inducing the tenants of the respondent to repudiate such tenancy and to pay rent to the petitioners and persons acting in concert with them, and that, except in such cases, and in cases where they have induced persons to enter and break into certain houses upon the said tract of land, without the consent of respondent, petitioners are not in possession of any portion of said land: That it has been necessary for the respondent to bring numerous suits to recover the possession of land in said tract lately surreptitiously of forcibly taken possession of by petitioners, and that all of said suits except one, which is now pending, have been degermined in favor of the respondent.

BLOUNT & BLOUNT,
Solicitors for Respondent.

STATE OF FLORIDA,
Escambia County.

Personally appeared before me William Fisher, who being duly sworn says that the statements made in the foregoing answer are true.

WM. FISHER.

Sworn to and subscribed before me this 8th day of July, A. D. 1901.

[NOTARIAL SEAL.]

JOHN POOLE,
Notary Public.

20 On July 16th, 1901, the complainants filed the following answer.

W. H. DAVIDSON ET AL
vs.
J. C. PETTERSEN ET AL.

The complainants for answer to the petition of John D. Caro, Joseph C. Keyser and Josephine Caro to vacate interlocutory and final decree made in this cause on April 4th, 1887, and January 17th, 1899, says:

1.

Answering the second paragraph of the petition — that the final decree made in said cause was appealed by petitioners and others to the supreme court of the State of Florida and there examined upon its merits and a decree rendered by the supreme court affirming the final decrees of the said J. F. McClellan.

2.

Answering the fourth paragraph the complainants say that more than ten years prior to the beginning of this suit the wife of the said J. F. McClellan the sister of the said C. C. Yonge, Sr., had died.

BLOUNT & BLOUNT,
Solicitors for Complainants.

21 Petitioners demur to foregoing answer.

R. H. FRIES,
BENJ. S. LIDDON,
Sol's for Pet'rs.

July 10th, 1901.

We waive former demurrer certificate.

BLOUNT & BLOUNT,
Sol's for Resp.

July 10th, 1901.

In Escambia County Circuit Court, 1st Judicial Circuit, State of Florida. In Chancery.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. Yonge, Sr., *et al.*

—

J. C. PETTERSEN, JOS. C. KEYSER, JOHN B. CARO, ET AL.

This cause coming on to be heard before me on an application to remove the receiver in said cause, I, E. C. Maxwell, judge of the 1st judicial circuit, Escambia county, Florida, hereby decline to pass on hear or determine the matters referred to in said application on the following grounds:—

1st. I am the nephew by affinity of said W. H. Davidson, a party complainant in said cause.

2nd. I am the nephew by consanguinity of the said W. E. Anderson, a party complainant in said cause.

3rd. My wife is the niece of said Peter Knowles' wife.

Done at Pensacola this 27th day of June, 1901.

E. C. MAXWELL,
Judge First Jud. Circ't of Fla.

22 In the Circuit Court, First Judicial Circuit of Florida, Escambia County. In Chancery.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. Yonge, Sr., *et al.*

vs.

J. C. PETTERSEN, JOSEPH C. KEYSER, JOHN B. CARO, ET AL.

The petitioners John B. Caro, Joseph C. Keyser and Josephine Caro, by her next friend Albery V. Caro, coming on to be heard upon the petition and answers thereto filed before me July 13th, 1901, and having been argued by counsel for the respective parties and the court being now advise- in the premises, and it appearing from the certificate of the Honorable E. C. Maxwell, judge of the first judicial circuit of Florida, that he is disqualified from acting in the caid cause.

Now therefore it is ordered, adjudged and decreed that said petition to vacate the decrees heretofore entered in said cause be and the same is hereby denied.

Done at Jacksonville, Florida this July 13th, 1901.

R. M. CALL,
Judge of the 4th Judicial Circuit of Florida.

STATE OF FLORIDA, }
Escambia County. }

I, A. M. McMillan, clerk of the circuit court of Escambia county, Florida, hereby certify that the foregoing is a true copy of the records of this office as they appear in Minute Book N, page 100.

In testimony whereof I hereunto affix my hand and seal official this 16th day of July, 1901.

A. M. McMILLAN,
Clerk Circuit Court.

23 Escambia County Circuit Court, First Judicial Circuit, State of Florida. In Chancery.

W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. Yonge, Sr., *et al.*
vs.
J. C. PETTERSEN, JOSEPH C. KEYSER, JOHN B. CARO, ET AL.

To the Hon. E. C. Maxwell, judge of the 1st judicial circuit court, Escambia county, Florida, in chancery:

Your petitioners, Joseph C. Keyser, John B. Caro, and Josephine Caro, who appears herein by her next friend, Albert V. Caro, respectfully show unto your honor:

1st. That they are respondents in the said cause and each over twenty-one (21) years, except the said Josephine Caro who is a minor under eighteen years of age:

2nd. That on the 4th day of April, 1887, the Honorable James F. McClellan, judge of said court made an order in the said cause, appointing one William Fisher, receiver of the Rivas tract in the city of Pensacola, Escambia county, Florida, and on January 17th, 1889, made another order continuing said Fisher as such receiver:

3rd. Your petitioners show unto your honor that said Judge McClellan was at the time of making said orders of kin by affinity to the said C. C. Yonge, Sr., a party plaintiff of said cause, the said Judge McClellan having previously intermarried with a sister of said Yonge (as shown by a copy of the marriage license, marked Exhibit "A," hereto attached and made a part hereof) and having at the time of said orders living children, the issue of said Judge McClellan and his wife, the sister of the said Yonge: that by reason of such relationship the said McClellan was disqualified in said cause and without authority to enter such orders and that his action in that behalf was without jurisdiction, of no force or validity, and null and void:

Stricken out by petitioners.

24 4th. That your petitioners discovered by accident on February 10th, 1901, the relationship of said Judge McClellan and said Yonge.

5th. That, despite the invalidity and nullity of said orders, the said Fisher is knowingly, wilfully and illegally pretending to be receiver for this court in said cause, is acting under color of such appointment, is collecting rents from the tenants of your petitioners, threatening and intimidating them with notices to vacate the land of which they are in possession by the authority of your petitioners unless they attorn to the said pretended receiver and is illegally using the name and authority of this court to accomplish designs for his own advantage in compelling under threats of removal the numerous tenants of your petitioners to pay him rent under the cloak of such receivership.

Wherefore your petitioners pray that a rule be issued to the said Fisher to show cause why he should not be removed from his said pretended receivership; that said Fisher be restrained and enjoined from acting as such receiver until the further orders of this court; that he be removed from his said alleged receivership;

Your petitioners pray for such other and further, general and additional relief as may be equitable and meet in the premises.

RICH. H. FRIES &
BENJ. S. LIDDON,
Sol's for Petitioners.

STATE OF FLORIDA,
Escambia County.

Personally appeared before me Joseph C. Keyser, one of the petitioners in the above cause, who being duly sworn says that he has read the foregoing allegations and that the same are true.

JOS. C. KEYSER.

Subscribed and sworn to before me this 27th day of June, A. D. 1901.

[NOTARIAL SEAL.] WILBUR U. GOODMAN,
Notary Public.

25 STATE OF FLORIDA,
County of Jackson.

To any judge, regularly ordained minister of the gospel or a justice of the peace for said county, Greeting:

Whereas James F. McClellan has this day applied to me for license to authorize his marriage with Miss Adelaid M. Yonge of said county and there being no lawful impediment known to me why the same should not be issued,

Now, therefore, these are your license and authority to solemnize the rites of matrimony between the above named parties.

Given under my hand and seal of office this 27th day of March, A. D. 1850, and of the Independence of the United States the 74th year.

SAMUEL BELLAMY, *Clerk*,
By NATHAN C. WATSON, *D. C.*

STATE OF FLORIDA, }
Jackson County. }

This is to certify that I, Frederick R. Pittman, judge of probate of said county have joined James F. McClellan and Adelaid M. Yonge in the holy bonds of matrimony in presence of the above license.

[SEAL] FREDERICK R. PITTMAN,
Judge of Probate of Jackson County.

STATE OF FLORIDA, }
Jackson County. }

I, Sam. C. Bellamy clerk of the circuit court of Jackson county, do hereby certify that the above is a true copy of the original on file in my office, May 23rd 1850.

SAM. C. BELLAMY, *Clerk.*

STATE OF FLORIDA, }
Jackson County. }

I, J. C. McKinnon, do hereby certify that the annexed and foregoing is a true and correct copy of the record of the marriage of James F. McClellan to Adelaid M. Yonge, as appears from the records and files of the county judge's court of Jackson county, Florida, especially on page 24 of Book "A" of the records of marriages of said county, and as such official, I am the custodian of said records.

Given under my hand and seal of office this 21st day of June, A. D. 1901.

(Signed) J. C. McKINNON,
[SEAL] *County Judge of Jackson County, Florida.*

26 In Escambia County Circuit Court, State of Florida.

W. H. DAVIDSON ET AL. }
vs.
J. C. PETTERSEN ET AL. }

The clerk of the court, in making up the transcript of record in this case, will include therein, in addition to the papers directed to be included by the solicitor for appellant, the following, to-wit: The agreement this day filed, being an agreement that the transcript of record now on file in the supreme court in this case in a former ap-

peal of the same, and the opinion of the supreme court, as reported in the official reports, shall be considered as forming a part of the record in the present appeal.

BLOUNT & BLOUNT,
Solicitors for W. H. Davidson et al.

(Filed Nov. 8, 1901.)

27 First Judicial Circuit of Florida, Circuit Court of Escambia County.

W. H. DAVIDSON ET AL.
vs.
J. C. PETTERSEN ET AL.

In this case it is agreed by the respective parties hereto that the transcript of record now on file in the supreme court in this case, filed in an former appeal of the same, and the opinion of the supreme court as reported in the official reports, be considered as forming a part of the record in the present appeal as full to all intents and purposes as if the same were duly recorded in the transcript of the record of the same.

BENJ. S. LIDDON,
Attorney for Plaintiffs.
BLOUNT & BLOUNT,
Attorney- for Defendants.

(Filed Nov. 8, 1901.)

28 I, A. M. McMillan, clerk of the circuit court of Escambia county, State of Florida, do hereby certify that the foregoing pages numbered from 1 to 24 inclusive, contain a correct copy of the transcript of the record and of the judgment and decrees of the court in the matter of the petition of J. B. Caro in the case of W. H. Davidson *et al. v.* J. G. Pettersen *et al.* to vacate certain interlocutory decrees, and upon the petition of the said parties to remove the receiver in said case, and that the above contains a true and correct recital and copy of all papers and proceedings in said case as appears upon the record and files of this office, and that have been directed to be included in said transcript by the written directions of the said parties.

In testimony whereof I have hereunto set my hand and seal of the circuit court this 2 day of January, 1902.

[SEAL.]

A. M. McMILLAN,
Clerk Circuit Court,
By B. H. BURTON,
Deputy Clerk.

29 And afterwards, on the 31st day of March, 1902, came the appellants in the said cause, by their counsel, and submitted their cause to the said supreme court of Florida upon the said transcript of the record and written briefs.

And at a subsequent day, to-wit: on the 17th day of November, A. D. 1903, judgment was rendered by the said supreme court of Florida in words and figures as follows, to-wit:

Supreme Court of Florida, June Term, A. D. 1903.

J. B. CARO, J. C. KEYSER, and Josephine Caro, by Her Next Friend, A. V. Caro, Appellants, *vs.* W. H. DAVIDSON, W. E. ANDERSON, Peter Knowles, C. C. Yonge, *et al.*, Appellees.	Upon Appeal from a Decree of the Circuit Court within and for the County of Escambia.

This cause having been submitted to the court at a previous term thereof upon a transcript of the record of the decree aforesaid and the argument of counsel for the respective parties, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said decree; it is, therefore, considered, ordered and adjudged by the court that the said decree of the circuit court be and is hereby affirmed; and it is further ordered that the appellees do recover of the appellants their costs by them
30 in this behalf expended, which costs are taxed at the sum of —; all of which is ordered to be certified to the court below.

The decision of the court in this cause was this day read, and ordered to be filed.

R. F. TAYLOR,
Chief-justice.

And afterwards, to wit: on the 19th day of December, 1903, came the appellants, by their counsel, and filed in open court before the chief-justice their petition for an allowance of a writ of error to said judgment, returnable before the Supreme Court of the United States within 30 days from the issuance of the citation herein, which petition is on the words and figures as follows, to wit:—

To the honorable presiding judge or chief-justice of the supreme court of the State of Florida:

The petition of Joseph C. Keyser, John B. Caro and Josephine Caro, all residents of the city of Pensacola, Escambia county and State of Florida, and over twenty-one years of age, represent that they are — parties defendant in suit —— No. — on the docket of ——, Escambia county circuit court, and No. "83"

on the docket of the supreme court of Florida. That all of your petitioners, except Joseph C. Keyser are lawful descendants and heirs of Gabriel de Rivas, deceased, and to whom was granted by the Crown of Spain in the year 1806, the tract of land described in the above numbered suit entitled —— ——, W. H. Davidson *et als. vs.* J. C. Pettersen *et als.* That in said suit in said Escambia county circuit court, there was judgment in favor of plaintiffs, and from which judgment there was an appeal to the supreme court of the State of Florida, and which said judgment was affirmed by said supreme court, as all of which is fully shown in said record in said supreme court. That your petitioners having learned that
31 Hon. F. McClellan, the judge who entertained jurisdiction and decided said suit in said county court, was disqualified to entertain jurisdiction and decide said case, filed petition in said county circuit court on the 17th day of April, 1901, with prayer that judgment and proceedings in said suit of W. H. Davidson *et als. vs.* J. C. Pettersen *et als.* be declared a nullity and utterly void and of no effect. That upon hearing said petition and evidence, there was judgment against maintaining the validity of said judgment, sought to have declared null and void.

That from said judgment, an appeal was taken to the supreme court of Florida, where said judgment in said county circuit court was affirmed on the — day of ——, 1903, and is now a final judgment, as all of which is fully shown by record of said case in said supreme court. That the amount or value of property involved in said suit and proceedings, exceeds fifty thousand dollars, beside the revenue thereof.

Your petitioners now represent that they believe there is an error to their prejudice, and by said judgment that they are much aggrieved and injured by said final decree of the supreme court of the State of Florida, in affirming the judgment of said county circuit court, in this:—

1st. That said court erred in not declaring said Judge James F. McClellan disqualified to entertain jurisdiction over or make decree in suit of W. H. Davidson *et als. vs.* J. C. Pettersen *et als.* on account of relationship as prohibited under pain of — nullity, under the laws of the State of Florida.

2nd. Because said supreme court in passing upon the questions of law and facts presented in the record of appeal, had drawn in question before said court, the legality and constitutionality of an act of the General Assembly of the State of Florida, being "An act to amend section 970 of the Revised Statutes of the State of
32 Florida, relating to the disqualification of judges. Approved May 30th, 1901," as applicable or not to petitioner's case on appeal.

That said decision of the supreme court *could not have affirmed* the decision of said circuit court without deciding the validity or invalidity of said act of the General Assembly of Florida, amending the Revised Statutes of Florida as applicable to case decided,

Harris *vs.* Dennis, 3rd Peters, 292. That by *necessary intendment* and by the necessary and natural intendment of what was read in said record, coupled with said amendatory law, the question arose as to the repugnancy of said amendatory law to the 10 section of the first article of the Constitution of the United States, because of its being *ex post facto* as applied to the judgment od said James McClellan.

Furman *vs.* Nichol, 8th Wallace, 44.

3rd. That by said decision, under said *ex post facto* law, the supreme court of Florida has affirmed a decree that divests petitioners of vested rights, in violation of the Constitution of the United States above quoted, and further, that by reason of the disqualification of said Judge James F. McClellan, petitioners were denied the due process of law, in defense of their rights, in violation of the Constitution of the United States and affirmed by the supreme court of Florida.

Petitioners now represent that the supreme court of the State of Florida, is the highest court in said State, to which petitioners have the power to carry the questions of law and facts in said affirmed suit, and that the decree therein is final.

Petitioners now represent that said amended law of Florida is *ex post facto* in its application to the judgment of James F. McClellan, and its validity having been affirmed in said decision of the supreme court of Florida the question of repugnancy to the Constitution of the United States "*arose*" both incidentally and directly in sustaining
33 its validity in said case. That while the record in plain terms and pleading does not raise the question of its repugnancy to said Constitution, still, by necessary intendment such question was raised, as by decree affirming the judgment of the lower court, the supreme court of Florida decreee the validity of an *ex post facto* law, as well as sustaining a law that *ex post facto* divests your petitioners of vested rights, and denial of the due process of law in their defense, by reason of null proceedings.

Armstrong *vs.* Treasurer, &c., 16 Peters, 281;
Cromwell *vs.* Randall, 10th Peters, 368;
Wolfe *vs.* Stix, 6th Otto, 432;
Beer Co. *vs.* Mass., 7 Otto, 25, 8th Otto, 149.

Petitioners, therefore, urge that the decree of the said supreme court of the State of Florida is erroneous, and violative of the Constitution of the United States, and that they are entitled to writ of error to said court, that the Supreme Court of the United States may review said decree and render judgment thereon, in conformity with the Constitution of the United States and law governing said cases.

Wherefore, your petitioners pray for writ of error directed to the supreme court of the State of Florida, commanding said court to make due return to the Supreme Court of the United States, at

Washington city, District of Columbia, of complete record of proceedings and judgment in said suit of W. H. Davidson *et als. vs.* J. C. Pettersen *et als.*, and that without delay, and that supersedeas be granted upon such bond as your honor may fix, and all as the law and rules of court require, and for general and equitable relief.

Gleason *vs.* Florida, 9th Wallace, 779.

SIMEON BELDEN &
E. T. DAVIS,
Attorneys for Petitioners.

34 ESCAMBIA COUNTY, }
State of Florida. }

Personally before me came Joseph C. Keyser, who being duly sworn, says that the allegations in the foregoing petition are true.

JOSEPH C. KEYSER.

Sworn to and subscribed before me this 17th day of December, A. D. 1903.

[SEAL.]

JOSEPH U. RIVA,
Notary Public, State at Large.

Commission expires July 16, 1905.

Whereupon, on the same day, the prayer of the petitioners was granted by an order in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida.

J. B. CARO, J. C. KEYSER, and JOSEPHINE CARO, by Her Next Friend, A. V. Caro, Appellants,
vs.
W. H. DAVIDSON, W. E. ANDERSON, PETER KNOWLES, C. C. Yonge, *et al.*, Appellees.

And now come the appellants, by their counsel, and file their petition praying for a writ of error to be allowed by this court to the final decree rendered on the 17th day of November, A. D. 1903, returnable 30 days from the issuance of citation herein, to the Supreme Court of the United States.

Whereupon it is considered and ordered by the court
35 that the prayer of the petitioners is granted and the writ of error is allowed. This December 19th, 1903.

R. F. TAYLOR,
Chief-justice, Supreme Court of Florida.

And thereafter upon the same day upon presentation to the chief-justice of said petition for the allowance of a writ of error the same was allowed by the chief-justice as appears upon the original writ of error accompanying this return.

And thereafter upon the 30th day of January, 1904, a citation was allowed by the chief-justice as appears upon the original citation accompanying this return and the writ of error aforesaid.

And thereafter, to-wit: on the 9th day of February, 1904, and during the term of the said court, the original bond of the plaintiffs in error in this writ of error, approved by the Honorable R. F. Taylor, chief-justice of the supreme court of the State of Florida, was filed in the words and figures as follows:—

36 Know all men by these presents, that we, J. B. Caro, J. C. Keyser and Josephine Caro, by her next friend, A. V. Caro, as principals, and L. Carlson and George W. Pryor, as sureties, are held and firmly bound unto W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston and Abida R. Booth in the full and just sum of two hundred and fifty dollars ($250), to be paid to the said W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate, personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thruston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livington, and Abida R. Booth, or their certain attorney, executors, administrators or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this — day of February, in the year of our Lord one thousand nine hundred and four.

Whereas, lately at a regular term of the supreme court of the State of Florida, in a suit depending in the said court between J. B. Caro, J. C. Keyser and Josephine Caro by her next friend, A. V. Caro as appellants, against W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate, personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley,
37 E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart N. Thruston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston, and Abida R. Booth as appellees, a judgment or decree was rendered against the said J. B. Caro, J. C. Keyser and Josephine Caro, by her next friend A. V. Caro, and the said J. B. Caro, J. C. Keyser and Josephine Caro by

her next friend A. V. Caro, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the decree or judgment in the aforesaid suit, and citation directed to the said W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate, personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thruston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston, and Abida R. Booth, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date thereof.

Now, the condition of the above obligation is such, that if the said J. B. Cara, J. C. Keyser and Josephine Caro by her next friend, A. V. Caro, shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their said plea good, then the above obligation to be void; else to remain in full force and virtue.

J. B. CARO. [SEAL.]
JOS. C. KEYSER. [SEAL.]
A. V. CARO, [SEAL.]
Next Friend of Josephine Caro.
L. CARLSON. [SEAL.]
GEO. W. PRYOR. [SEAL.]

Sealed and delivered in presence of
R. WILSON,
J. J. SULLIVAN.

38 STATE OF FLORIDA, }
County of Escambia. }

Personally came before me L. Carlson, to me personally well known, and being duly sworn made oath that he is worth more than the sum of two hundred and fifty dollars ($250) over and above all just debts and exemptions allowed by law.

L. CARLSON.

Sworn to and subscribed before me this 8th day of February, A. D. 1904.

J. J. SULLIVAN,
Notary Public.
[SEAL.]

My commission expires Ap'l 14, 1906.

STATE OF FLORIDA, }
County of Escambia. }

Personally came before me Geo. W. Pryor, to me personally well known, and being duly sworn made oath that he is worth more

than the sum of two hundred and fifty dollars ($250) over and above all just debts and exemptions allowed by law.

GEO. W. PRYOR.

Sworn to and subscribed before me this 8th day of February, A. D. 1904.

J. J. SULLIVAN,
Notary Public.

[SEAL.]

My commission expires Ap'l 14, 1906.

This bond is approved

R. F. TAYLOR,
Chief-justice of the Supreme Court of the State of Florida.

39 I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that foregoing pages numbered from one (1) to thirty-eight (38) inclusive constitute a true copy of all of the proceedings and a correct transcript of the record of the judgment or decree in the case of J. B. Caro, J. C. Keyser and Josephine Cara by her next friend A. V. Caro, plaintiffs in error, *vs.* W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston and Abida R. Booth, defendants in error, as appears upon the files and records of my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court of Florida, at Tallahassee, this 20th day of February, A. D. 1904.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

40 The foregoing transcript of the record of the proceedings of the supreme court of the State of Florida in the case of J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro, plaintiffs in error, and W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van

Baugh Livingston and Abida R. Booth, defendants in error, is transmitted to the Supreme Court of the United States in obedience to a writ of error issued herein, the original of which is attached.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida before you or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro, and W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston and Abida R. Booth, wherein was drawn in question the propriety of a proceeding by bare petition to vacate and set aside a final decree of a court of competent jurisdiction, after the lapse of many years from its rendition, and after such decree had been fully considered on appeal on its merits by the court of last resort of said State, as will appear by the decision of said court in the case of Wilkins, Runyan, Keyser *et al. vs.* The Pensacola City Company, W. H. Davidson *et al.*, reported in 36 Fla. Rep. on page 36, and the decision was against the propriety of such proceeding by petition, a manifest error hath happened, to the great damage of the said J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-ninth (29th) day of February, A. D. nineteen hundred and four (A. D. 1904), in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief-Justice of the said Supreme Court, the thirtieth (30th) day of January, in the year of our Lord one thousand nine hundred and four (A. D. 1904), and clerk of the circuit court of the United States for the fifth judicial circuit northern district of Florida.

[Seal U. S. District Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk of the United States Circuit Court for the Fifth Judicial Circuit of the Northern District of Florida,
By J. J. HODGES,
Deputy Clerk.

Writ of error allowed, January 30th, A. D. 1904.

R. F. TAYLOR.
Chief-justice Supreme Court of Florida.

42 UNITED STATES OF AMERICA, *ss:*

To W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate, personally and as administrator of Sallie S. Tate, deceased; Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida; A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston, and Abida R. Booth, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Florida wherein J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this thirtieth day of January, in the year of our Lord one thousand nine hundred and four.

[Seal Supreme Court of the State of Florida.]

R. F. TAYLOR,
Chief Justice of the Supreme Court of the State of Florida.

By the chief-justice.

Attest: B. B. WILSON,
Clerk Supreme Court, State of Florida.

Baugh Livingston and Abida R. Booth, defendants in error, is transmitted to the Supreme Court of the United States in obedience to a writ of error issued herein, the original of which is attached.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

41 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the supreme court of the State of Florida, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida before you or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit between J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro, and W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate personally and as administrator of Sallie S. Tate, deceased, Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida, A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston and Abida R. Booth, wherein was drawn in question the propriety of a proceeding by bare petition to vacate and set aside a final decree of a court of competent jurisdiction, after the lapse of many years from its rendition, and after such decree had been fully considered on appeal on its merits by the court of last resort of said State, as will appear by the decision of said court in the case of Wilkins, Runyan, Keyser *et al. vs.* The Pensacola City Company, W. H. Davidson *et al.*, reported in 36 Fla. Rep. on page 36, and the decision was against the propriety of such proceeding by petition, a manifest error hath happened, to the great damage of the said J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the twenty-ninth (29th) day of February, A. D. nineteen hundred and four (A. D. 1904), in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief-Justice of the said Supreme Court, the thirtieth (30th) day of January, in the year of our Lord one thousand nine hundred and four (A. D. 1904), and clerk of the circuit court of the United States for the fifth judicial circuit northern district of Florida.

[Seal U. S. District Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk of the United States Circuit Court for the Fifth Judicial Circuit of the Northern District of Florida,
By J. J. HODGES,
Deputy Clerk.

Writ of error allowed, January 30th, A. D. 1904.

R. F. TAYLOR.
Chief-justice Supreme Court of Florida.

42 UNITED STATES OF AMERICA, *ss:*

To W. H. Davidson, W. E. Anderson, Peter Knowles, C. C. Yonge, Sr., W. A. Booth, The Pensacola City Company, Walter Tate, personally and as administrator of Sallie S. Tate, deceased; Louis Boley, Pensacola and Atlantic Railroad Company, a corporation of Florida; A. V. Clubbs, W. D. Chipley, E. A. Perry, C. B. Parkhill, Thomas C. Watson, Alex. Stoddart, N. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston, and Abida R. Booth, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Florida wherein J. B. Caro, J. C. Keyser and Josephine Caro by her next friend A. V. Caro are plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this thirtieth day of January, in the year of our Lord one thousand nine hundred and four.

[Seal Supreme Court of the State of Florida.]

R. F. TAYLOR,
Chief Justice of the Supreme Court of the State of Florida.

By the chief-justice.

Attest: B. B. WILSON,
Clerk Supreme Court, State of Florida.

43 On this 20th day of February, in the year of our Lord one thousand nine hundred and four, personally appeared before me, the subscriber, E. T. Davis, who being duly sworn, says that he is one of the attorneys for plaintiffs in error, and makes oath that he delivered a true copy of the within citation to W. A. Blount, a member of the firm of Blount & Blount, attorneys for defendants to-wit W. H. Davidson, W. E. Anderson, Walter Tate, Louis Boley, Pensacola and Atlantic R. R. Co. A. V. Clubs, T. C. Watson, & Alex. Stoddart and served citation on W. H. Knowles executor of estate of Peter Knowles, & P. K. Younge executor of estate of C. C. Younge Sr., and C. B. Parkhill personally, and Hunt Chipley executor of estate of W. D. Chipley, by mailing a copy to him at his residence, (and M. Thurston, Fannie E. Haines, Electra B. Richards, Josephine C. W. Terry, Van Baugh Livingston, Abida R. Booth, W. A. Booth, and Pensacola City Co. could not be found, and whereabouts not known), and David Perry as administrator of estate of E. A. Perry, deceased.

E. T. DAVIS.

Sworn to and subscribed the 20th day of February, A. D. 1904.

[Seal of J. J. Sullivan, Notary Public, State at Large, Pensacola, Florida.]

J. J. SULLIVAN,
Notary Public.

My commission expires Ap'l 14, 1906.

Service acknowledged for W. H. Davidson, W. E. Anderson, Walter Tate, Louis Boley, Pensacola & Atlantic R. R. Co., A. V. Clubs, Thos. C. Watson, Alex. Stoddart.

BLOUNT & BLOUNT, *Att'ys.*

2-20-1904.

44 In the Supreme Court of Florida, Division A, June Term, A. D. 1903.

J. B. CARO, J. C. KEYSER, and JOSEPHINE Caro, by Her Next Friend, A. V. Caro, Appellants,
vs.
W. H. DAVIDSON, W. E. ANDERSON, PETER Knowles, C. C. Yonge, *et al.*, Appellees.
} Escambia County.

Per Curiam:

This cause coming on for final adjudication before division A of the court upon the transcript of record and brief of counsel for the appellants, after due consideration the court, being fully advised of its judgment to be given in the premises, finds no error in the said record, and it is, therefore, hereby considered, ordered, adjudged and decreed that the order or decree of the circuit court appealed from in said cause be, and the same is hereby, affirmed at the cost of the appellants.

I, B. B. Wilson, clerk of the supreme court of the State of Florida, do hereby certify that the foregoing is a true copy of the decision of the supreme court of the State of Florida, which was filed in my office on the 17th day of November, 1903.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said supreme court, at Tallahassee, the capital, this 20th day of February, A. D. 1904.

[Seal Supreme Court of the State of Florida.]

B. B. WILSON,
Clerk Supreme Court, State of Florida.

Endorsed on cover: File No. 19,248. Florida supreme court. Term No. 196. J. B. Caro, J. C. Keyser, and Josephine Caro, by her next friend, A. V. Caro, plaintiffs in error, *vs.* W. H. Davidson, W. E. Anderson, Peter Knowles, *et al.* Filed February 26, 1904. File No. 19,248.

IN THE

Supreme Court of the United States.

October Term, 1904.

J. B. CARO, J. C. KEYSER, *et al.*
Plaintiffs in Error,
v.
W. H. DAVIDSON, W. E. ANDERSON,
Defendants in Error.

No. 196.

Brief for Plaintiffs in Error in Reply to Motion to Dismiss.

Defendants in error move to dismiss the writ of error bringing the case before this court for want of jurisdiction. In reply we consider the following questions involved that give this court jurisdiction:

I. There was drawn in question by the final judgment of the Supreme Court, whether an authority exercised under the State was not repugnant to that portion of the 14th Amendment of the Constitution of the United States that provides that a person shall not be deprived of his property without due process of law; and also whether a decision in favor of the validity of the statute of a State did not draw in question the validity as being repugnant to this same provision in the 14th Amendment of the Constitution.

The case arises as follows: A motion was made in the Circuit Court of Escambia County, Florida (pp. 3, 4, Rec.), to declare of no force or validity, and null and void, certain interlocutory orders of March 5, 1887, and April 4, 1887, and the perpetual injunction and order of January 17, 1889, appointing one William Fisher as receiver for the Rivas tract of land. The ground for this motion was that at the time of the granting of said interlocutory injunction and said order appointing Fisher as receiver and granting of said alleged injunction and final decree, Judge McClellan, who made the order and rendered the decree, was of kin by affinity to C. C. Young, Sr., a party plaintiff to said cause, having married the sister of the said C. C. Young, Sr., and having at the time of making said orders and rendering said decrees living children the issue of said marriage.

To this objection defendants in error answered:

1. That the final decree made in said cause was appealed by petitioners and others to the Supreme Court of the State of Florida and was examined upon its merits, and a decree rendered by the Supreme Court affirming the final decrees of the said Judge J. F. McClellan.

2. Answering the 4th paragraph. That more than ten years prior to the beginning of this suit the wife of the said Judge McClellan, the sister of the said C. C. Young, Sr., had died (p. 13, Rec.).

To this answer plaintiffs in error demurred (p. 13, Rec.).

On these pleadings the motion was dismissed in the Circuit Court without any opinion being rendered (p. 14, Rec.).

Upon appeal to the Supreme Court of Florida the decree of dismissal was affirmed without any opinion being rendered (p. 19, Rec.).

The following statute law was in force when the orders were made and the decree rendered by Judge McClellan

and when the motion to have same declared null and void was made.

"No judge of any court shall sit or preside in any cause to which he is a party, or in which he is interested, or in which he would be excluded from being a juror by reason of interest, consanguinity or affinity to either of the parties, nor shall he entertain any motion in the cause other than to have the same tried by a qualified tribunal."

Sec. 957, R. S. Fla. p. 354, 1892.

"Any and all judgments, decrees and orders, except an order for the trial of the cause as hereinbefore provided, made by a judge so disqualified, shall be of no force and validity and shall be null and void."

Sec. 970, R. S. Fla. p. 354, 1892.

The following was the law of Florida relative to the qualification of jurors:

"The court shall, on motion of each party in any suit, examine on oath any person who is called as a juror therein to know whether he is related to either party, or has any interest in the cause, or has expressed or formed any opinion, or is sensible of any bias or prejudice therein; and the party objecting to the juror may introduce any other competent evidence in support of the objection; and if it shall appear to the court that the juror does not stand indifferent to the cause, or is otherwise incompetent, another shall be called and placed in his stead for the trial of that cause."

Sec. 1086, Code of Florida, 1892.

The Supreme Court of Florida has carried the doctrine of the disqualification of a judge through relationship by affinity further than a good many of our State courts have done.

In a well-considered case reviewing the subject at length the Supreme Court has held that a judge will be disqualified when any blood relative of his wife within the ninth degree, or the husband or wife of such relative is the interested party. *State* v. *Wall*, 41 Fla. 463, 467.

In another case wherein was involved the question of a judge having at one time been interested as counsel in a branch of the litigation under consideration, the court discusses very fully the reasons why the disqualification of judges should not be given a narrow and technical construction. *State ex rel.* v. *Hocker*, 34 Fla. 25.

It is a well-settled principle that affinity is a proper ground of challenge to the jury either to the array or to the polls, and that the relationship by affinity continues if there be issue of the marriage. This rule is laid down in the numerous authorities bearing upon the subject cited in the following case by Judge Lumkin of Georgia.

"The general rule is that relationship by affinity is dissolved by the death of either party to the marriage which created the affinity, provided the deceased party left no issue living." Thom. and M. Jur. p. 181; *Dearmond* v. *Dearmond*, 10 Ind. 191;

"Affinity is the principal ground of challenge either to the array or to the polls, and it continues if there shall be issue of the marriage. *Vannoy* v. *Givint*, 23 N. J. Law, 201. See also *Cain* v. *Inghal*, 7 Cow. 478 and note at bottom of p. 479."

Miller v. *State* (Ga. Case), 25 S. E. Rep. 366.

By the statute law of Florida, and from the decisions of its Supreme Court above cited, the orders and decree of Judge McClellan were not voidable, but void.

"In all cases where a court is rendered incompetent to proceed, its proceedings during such incompetency are as invalid as though it had never possessed jurisdiction."

Freeman on Void Judicial Sales, Sec. 7.

Freeman on Judgments, Sec. 146, discusses disabilities of judges prescribed by statute, but in a number of cases the statute law cited is not so strong as the Florida statute, merely prohibiting judges from sitting in causes in

which they are related by consanguinity or affinity, without declaring, as Sec. 970 R. S. of Florida does, that decrees and orders rendered by them shall be null and void. The section treats of the inadvisability of permitting a judge even by consent to act where there may be a suspicion of interest, and says:

"But the general effect of the statutory prohibitions in the several States is undoubtedly to change the rule of the common law so far as to render those acts of a judge, involving the exercise of judicial discretion, in a case where he is disqualified from acting, not voidable merely, but void."

Freeman on Judgments, Sec. 146.

By answer of defendants in error it is claimed that the appeal from this decision to the Supreme Court of Florida gave validity to this null and void judgment. On page 2 of the brief of defendants in error on their motion to dismiss, it is stated:

"Many cases hold that an appeal from the circuit court of chancery to the Supreme Court, vacates the decree below, and the Supreme Court deals with the case as a new one," citing authorities.

We have carefully examined these authorities and can find nothing in them to justify such a claim. The first case cited to sustain the proposition lays down a rule which none of the other cases show any departure from—that "if counsel shall for the first time raise a point here (in the Supreme Court) which might not have been obviated had it been made in the court below, he ought not to be permitted to do so."

Southern Life Insurance and Trust Co. v. *Cole*, 4 Fla. 363.

The fifth section of the Petition in the Circuit Court for Escambia County (p. 4, Rec.), shows that your plaintiffs

in error did not know at the time that Judge McLellan rendered his decree of the relationship that existed between C. C. Young, Sr., and himself, and did not know it until after the case had been decided by the Supreme Court. The question therefore was never raised before Judge McLellan, and under the decision we have just cited could not for the first time have been raised in the Supreme Court of Florida, and it was not actually raised there, as will appear from the decision of that court in the case. *Wilkins* v. *Davidson*, 36 Fla. 36.

Furthermore, the Constitution of the State of Florida expressly limits the Supreme Court to appellate jurisdiction in all cases at law and in equity originating in circuit courts.

Sec. 5, Art. 5, Constitution of Florida. See Revised Statutes of Florida, p. 55.

It would indeed be strange if a supreme court by the same act whereby it affirmed the decree of the lower court, could vacate that decree for the purpose of giving validity to what was a nullity and absolutely void.

The affirmation of the Supreme Court of Florida of the decree of Judge McLellan could not make that decree valid.

"A void judgment is in legal effect no judgment, by it no rights are divested, from it no rights can be obtained, being worthless in itself, *all proceedings founded upon it* are equally worthless. It neither binds nor bars any one. All acts performed under it and all claims flowing out of it are void."

Freeman on Judgments, Sec. 117.

"Void judgments are mere nullities and may be safely ignored by those whose rights are attempted to be affected thereby."

11 American Decisions, Note on p. 755.

The record brought to this court clearly presents the

question that the decree of Judge McLellan was null and void, because of lack of jurisdiction in the court to render that decree. Without jurisdiction in the court no decree is due process of law, and we do not believe that defendants in error would contend that this court is without jurisdiction because of the record failing to show that there was drawn in question the depriving a person of his property without due process of law, prohibited by the 14th Article of the Constitution of the United States. The objection made to the jurisdiction of this court (pp. 3 and 4 of defendants in error's brief) is directed solely to another point, viz: that the record fails to show that the Supreme Court decided the validity of an *ex post facto* law of the State in repugnancy to the Federal Constitution.

"The 14th Article of Amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains 'nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibitions extend to all acts of the State, whether through its legislative, its executive or its judicial authorities. *Ex parte Virginia* (*'Virginia* v. *Rivas'*), 100 U. S. 313, 318, 319 (25: 667, 669); *Ex parte Virginia*, 100 U. S. 339, 346 (25: 676, 679); *Neal* v. *Delaware*, 103 U. S. 370, 397 (26: 567, 574). And the first one, as said *Chief Justice* Waite in *United States* v. *Cruikshank*, 92 U. S. 542, 554 (23: 588, 592), repeating the words of *Mr. Justice* Johnson in *Bank of Columbia* v. *Okely*, 17 U. S. 4 Wheat. 235, 244 (4: 559, 561); was intended 'to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice.'

"Upon a writ of error to review the judgment of the highest court of a State upon the ground that the judgment was against a right claimed under the Constitution of the United States, this court is no more bound by that

court's construction of a statute of the territory, or of the State, when the question is whether the statute provided for the notice required to constitute due process of law, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the State, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another State. In every such case, this court must decide for itself the true construction of the statute. *Huntington* v. *Attrill*, 146 U. S. 657, 683, 684 (36 : 1123, 1133); *Mobile & O. R. Co.* v. *Tennessee*, *ante*, p. 793.

"No judgment of a court is due process of law, if rendered without jurisdiction in the court, or without notice to the party."

Scott v. *McNeal*, 154 U. S. 45, 46.

"Since the adoption of the 14th Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction, do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance."

Pennoyer v. *Neff*, 95 U. S. 715.

II. That by a necessary intendment there was drawn into question an Act of the General Assembly of Florida, approved May 30, 1901, repugnant to Sec. 10, Article I of the Constitution of the United States, by reason of its being an *ex post facto* law, as applicable to the judgments of the said J. F. McClellan.

The transcript of the Circuit Court of Florida setting out the petition already referred to, and the pleadings thereto, were filed in the Supreme Court of the State of Florida January 3, 1901, (p. 1, Rec.). Subsequently, but previous to submission of the case to the Supreme Court the Legislature of Florida on May 30, 1901, passed the following act:

"*Be it enacted by the Legislature of the State of Florida:*

"SECTION 1. That Section 970, of the Revised Statutes of the State of Florida, be, and is, hereby amended to read as follows:

"SECTION 970. EFFECT OF HIS ACTION. Any and all judgments, decrees and orders heretofore or hereafter rendered in the causes where the disqualifications appear of record in the cause, shall be void, but where the disqualification does not so appear, they shall not be subject to collateral attack."

Acts of Legislature, 1901, p. 39.

The status of the matter plainly is this: That after the institution of proceedings to set aside this judgment, and after the case had been appealed to the Supreme Court, but before the case was heard there, the Legislature was prevailed upon to amend Sec. 970 as above set forth. The amendment was clearly aimed to reach this case by *ex post facto* legislation. The case was then pending. Judge McClellan had been disqualified, the disqualification did not appear of record, and this legislation provided that

all decrees and orders *heretofore* as well as hereafter rendered, should not be subject to collateral attack, unless the disqualification appeared of record. There is, as the court will readily see, good reason why mention is not made of this act in the record, the act not having been passed until after the record for the appeal was filed in the Supreme Court of Florida. The act presents a question of whether it is not *ex post facto*, in so far as it might shelter from collateral attack the decrees and orders of Judge McClellan, which were void at the time rendered. The act was carefully and ingeniously drawn. The petition is based on section 970, and that section, before the petition is heard by the Supreme Court, is carefully wiped out and for it is substituted an amendment making Section 970 read entirely anew, and read in such away that if sustained as a valid statute plaintiffs in error would be deprived of the remedy sought to be invoked by their petition.

The petition is dismissed without an opinion, and under this state of circumstances defendants in error say (p. 3, brief):

"That the act of 1901 is not to be found adverted to in the record, and can not for the purposes of the jurisdiction of this court be imported into it,"—

citing the case of *Powell* v. *Brunswick Co.*, 150 U. S. 440. But in this same case, p. 440, the court states:

"If it appear from the record by clear and necessary intendment that a federal question must have been directly involved, so that the said court could not have given judgment without deciding it, that will be sufficient."

Mr. Justice Washington laid down the following rule for the construction of the 25th Section of the Judicial Act of 1789:

"Questions of this nature have frequently occurred in this court, and have given occasion for a critical examination of the above section, which has resulted in the adoption of certain principles of construction applicable to it, by which the objection now to be considered may, without much difficulty, be decided. (2 Wheaton, 363; 4 Wheaton, 311; 12 Wheaton, 117.) One of those principles is, that if it sufficiently appear from the record itself, that the repugnancy of a statute of a State to the Constitution of the United States was drawn into question, *or that that question was applicable to the case*, this court has jurisdiction of the cause under the section of the act referred to; although the record should not, in terms, state a misconstruction of the Constitution of the United States, or that the repugnancy of the statute of the State to any part of that constitution was drawn into question."

Satterlee v. *Matthewson*, 2 Pet. 409, 410.

The question we conceive was applicable to the case here.

"It is true the court of appeals in its opinion only incidentally refers to statutes passed subsequent to the act of 1871, and places its decision distinctly on the ground that that act was void in so far as it related to the coupon contract, but at the same time it is equally clear that the judgment *did give effect to the subsequent statutes*, and it has been repeatedly held by this court that in reviewing the judgment of the courts of a State we are not limited to a mere consideration of the language used in the opinion, but may examine and determine what is the real substance and effect of the decision.

"* * * Suppose, further, that this court should hold that the first statute was valid and broad enough to exempt from all taxation, city as well as State, and adjudge the last act of the legislature void as in conflict with the prior; and that thereafter the city should again attempt to levy taxes upon the corporation, and that upon a challenge of those taxes, the State court should say nothing in respect to the last act, but simply rule that the original act exempting the property of the corporation from taxation was void, could it fairly be held that

this court was without jurisdiction to review that judgment, a judgment which directly and necessarily operated to give force and effect to the last statute subjecting the property to city taxes? Could it be said that the silence of the State court in its opinion changed the scope and effect of the decision? In other words, can it be that the mere language in which the State court phrases its opinion takes from or adds to the jurisdiction of this court to review its judgment? Such a construction would always place it in the power of a State court to determine our jurisdiction. Such, certainly, has not been the understanding, and such certainly would seem to set at naught the purpose of the Federal Constitution to prevent a State from nullifying by its legislation a contract which it has made or authorized to be made."

McCulloch v. *Virginia*, 172 U. S. 116, 117.

While the court rendered no opinion, when it acted the amendment of May 30, 1901, had become section 970, and by that amendment section 970 was repealed *in toto*. Therefore, can it be fairly said that the decision gave no effect to this subsequent statute?

"It would be a new rule of pleading and one altogether superfluous, to require a party to set out specially the provision of the Constitution of the United States, on which he relies for the action of the court in the protection of his rights. If the courts of this country, and especially this court, can be supposed to take judicial notice of anything without pleading it specially, it is the Constitution of the United States. And if the plaintiff and defendant, in their pleadings, make a case which necessarily comes within some of the provisions of that instrument, this court surely can recognize the fact without requiring the pleader to say in words: 'this paragraph of the Constitution is the one involved in this case.'"

Bridge Proprietors v. *Hoboken L. and I. Co.* 1 Wall. 142.

"It is enough for the purposes of this suit to say, that a cause can be removed from a State court into this court

under the 25th section of the Judiciary Act of 1789, whenever some one of the questions embraced in it was relied on by the party who brings the cause here, and when the right he claimed it gave him, was denied to him by the State court. It is urged that the particular provision of the Constitution, which the plaintiffs in error say has been violated in its application to their case, should be contained in the pleadings, but this is in no case necessary. If the record shows, either by express averment, or by clear and necessary intendment, that the constitutional provision did arise, and that the court below could not have reached the conclusion and judgment it did reach, without applying it to the case in hand, then the jurisdiction of this court attaches."

Furman v. *Nichol*, 8 Wall. 56.

Conclusion.

In addition to the arguments made and authorities cited showing why this court has jurisdiction, we beg to suggest for its information, that the case of *Florida McGuire, et al.* v. *W. A. Blount, et al.* No. 134, now before this court, contains a complete record of the claim and contention of both sides, with the records of title and evidence, both oral and written, and included therein is this decree of Judge McClellan, enjoining the plaintiffs in error here and appointing William Fisher, the agent of C. C. Young, Sr., receiver. The decree is therefore now within the jurisdiction of this court for its determination as to whether the same is void, and the question presented in this present case, No. 194, is the validity of this same decree.

H. A. Herbert,
Benjamin Micou,
E. T. Davis,
Simeon S. Belden,
Counsel for Plaintiffs in Error.

January 12, 1905.

In the United States Supreme Court.

OCTOBER TERM, 1904.

NO. 196.

J. B. CARO, J. C. KEYSER, ET AL,
Plaintiffs in Error,

vs.

W. H. DAVIDSON, W. E. ANDERSON, ET AL,
Defendants in Error.

The defendants in error move the Court to dismiss this Writ of Error for want of jurisdiction on the grounds:

1. That the record does not show that there was drawn in question in the Supreme Court of Florida, the validity of a treaty or statute of, or authority exercised under, the United States
2. Or, that that Court decided said question.
3. Or, decided the same against the validity of such treaty, statute or authority.
4. That the record does not show that there was in this cause in the said Court drawn in question any statute of, or authority exercised under any State on the ground of there being repugnant to the constitution, laws or treaties of the United States.
5. Or, that that Court determined such questions.
6. Or, determined the same in favor of the validity of such statute or authority.
7. That the record does not show that the defendants in error claimed in said Court, any right, title, privilege or immunity under the Constitution, or any treaty or statute of, or commission held or authority exercised under the United States.
8. Or, that the plaintiffs in error specially set up or claimed such title, right, privilege or immunity, or commission held, or authority exercised.
9. Or that the said Court decided such claim.

10. Or decided it against the title, right, privilege, immunity, commission or authority so claimed.

11. That the record does not show the presentation to the Supreme Court of Florida, or the decision by it of any Federal question.

12. That the record does not show that this Court has jurisdiction to review the judgment of the Supreme Court of Florida, from which this writ of error is prosecuted.

WM. A. BLOUNT,
A. C. BLOUNT, JR.,
Attorneys for Defendants in Error.

IN THE UNITED STATES SUPREME COURT.

OCTOBER TERM, 1904.

NO. 196.

J. B. CARO, J. C. KEYSER, ET AL,
PLAINTIFFS IN ERROR.

vs.

W. H. DAVIDSON, W. E. ANDERSON, ET AL,
DEFENDANTS IN ERROR.

On Motion to Dismiss for Want of Jurisdiction.

Brief of WILLIAM A. BLOUNT and A. C. BLOUNT, JR., Attorneys for Defendants in Error.

The record fails to show any jurisdiction in this Court. No question which it is entitled to review was presented to, or decided by the Supreme Court of Florida.

The petition of the Plaintiffs in error before the Circuit Judge (Transcript pages 3 to 5) was to set aside a final decree of the same Court in a Chancery cause (Transcript, pages 5 to 8) on the ground that the Judge (J. F. McClellan) who made the decree, was the brother-in-law of one of the complainants (C. C. Yonge, senior) in whose favor the decree was rendered, and hence that under the Statutes of Florida (Rev. Stat. p. 970), the claim was void.

The answer (Transcript page 13) of the defendants in error to this petition relied upon two grounds of defense, namely:

"That the final decree made in said cause was appealed by the petitioners (Plaintiffs in error here) to the Supreme Court of the State of Florida, and there examined upon its merits, and a decree rendered by the Supreme Court affirming the final decree of the said J. F. McClellan." (For

this decision of the Supreme Court see Wilkins vs. Davidson, 36 Fla. 36.)

That "more than ten years prior to the bringing of this suit the wife of the said J. F. McClellan, the sister of the said C. C. Yonge, Senior, had died"

Only two questions were thus presented:

Whether assuming that the decree in Chancery, rendered by a disqualified Circuit Judge, was void, such decree was not merged in a decree of the Supreme Court made by Judges therein not disqualified, and after the examination of the merits by them; and

Whether since the wife of J. F. McClellan, Judge, and the sister of C. C. Yonge, Senior, a complainant in whose favor the decree was rendered, had died before the bringing of the suit, and hence before the decree alleged to be void, her death did not dissolve the connection between them, and thus avoid the disqualification.

The defendants in error demurred to this answer (Transcript page 13) and the matter being argued, the petition was denied, (Transcript page 14).

The assignment of error by plaintiffs in error in the Supreme Court of Florida was only that the Circuit Court erred in denying the petition (Transcript page 2).

The Supreme Court affirmed the decree of the Court below, but delivered no opinion (Transcript page 19). It will thus be seen that there were only the two questions heretofore mentioned before the Circuit Court and the Supreme Court of Florida, and the latter merely passed upon the effect of the statute of the State of Florida (Revised Statutes, Sec. 970), under the circumstances set out in the petition.

The Court had strong reason based upon authority for this holding, for many cases hold that an appeal from the Circuit Court in Chancery to the Supreme Court, vacates the decree below, and the Supreme Court deals with the case as a new one.

So. Life, etc., vs. Cole, 4 Fla., 359;
Smith & Armistead vs. Croom, 7 Fla., 180;
State vs. J. P. & M., etc., 15 Fla., 201, 260;
O'Neil vs. Percival, 25 Fla., 118;
Foster vs. Ambler, 24 Fla., 770;
Neubert vs. Massman, 37 Fla., 91;
39 Fla., 280.

And hence this decree, although pronounced by a disqualified Judge in the Court below, became, upon re-examination on the merits by the Supreme Court, a decree of that Court.

The Court also had authority and reason for holding that Mrs. McClellan having died, and she being the only link furnishing a relationship between the Judge and the litigant before him, that relationship upon her death, ceased, and a decree rendered thereafter would not be void because of relationship within prohibited degrees.

Winchester vs. Hinsdale, 12 Conn., 93;
Yerby vs. Martin, 38 S. W. Rep., 541;
Cain vs. Ingam, 7 Cowen, 478.

It is entirely immaterial, however, whether the Supreme Court of Florida was right or wrong, so long as no federal question was involved, and decided by it.

The plaintiffs in error, however, seem to find a federal question in the assumption that the Supreme Court of Florida necessarily decided that the decree of Judge McClellan was invalid until the passage of the Act of 1901 (Chap. 4902, Laws of Fla , Session Acts, page 39) and that it was valid only because validated by that act. We assume that no well informed lawyer would claim that a void final judgment could be validated by subsequent action of the Legislature. Whether it would be void because in conflict with the Federal Constitution, or because in contravention of the division of powers among the departments of the State Government by the State Constitution, is a question we need not discuss, for it does not necessarily arise in this case.

Without such discussion there are several answers to the contention of the plaintiffs in error.

1. That the Act of 1901 is not to be found adverted to in the record, and cannot for the purposes of the jurisdiction of this Court be imported into it.

Powell vs. Brunswick County, 150, U S. 640.

2. That no "definite issue as to the validity of the statute * * * * * is distinctly deducible from the record before the State Court," so as to present a Federal question.

Ibid.

3. That if the decision of the State Court could have been made without deciding upon the validity of the statute, this Court has no jurisdiction.

McQuade vs. Trenton 172 U. S 640;
Hammond vs. Johnson 142 U. S. 73.

4. That no decision of the State Court in favor of the validity of the statute is on the record.

Dibble vs. Bellingham, etc., 163 U. S. 71.

The necessity for the assertion of the claim on the record and the principles which govern the Court in requiring that the record shall show jurisdiction, are so well settled by the repeated decisions of this Court, that it is unnecessary to make further citations.

Respectfully submitted,

WM. A. BLOUNT,
A. C. BLOUNT, JR.,
Attorneys for the Defendants in Error.
The Movants Herein.

Supreme Court of the United States.

No. 196.—October Term, 1904.

J. B. Caro et al., Plaintiffs in Error, vs. W. H. Davidson et al. } In error to the Supreme Court of the State of Florida.

[March 13, 1905.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

Plaintiffs in error filed their petition in the Circuit Court of Escambia County, Florida, in April, 1901, for the vacation of certain interlocutory and final decrees rendered March 5, 1887; April 4, 1887, and January 17, 1889, in favor of complainants, in a certain cause thereinbefore pending, on the ground that the said orders and decrees were null and void, because the judge by whom they were entered was the husband of the sister of one of the complainants, having at the time living children, the issue of their marriage; it being also averred that the relationship was not known until February, 1901.

Defendants in error set up by answer two defences: (1) That the original cause was carried to the Supreme Court of Florida and there examined upon its merits, and a decree rendered affirming the decree below. (2) That the wife of the Circuit Judge had died ten years prior to the bringing of that suit.

The petition to vacate the decree was denied July 13, 1901, by the Circuit Court, and its decree to that effect was affirmed by the Supreme Court, November 17, 1903, (the case having been submitted March 31, 1902,) whereupon this writ of error was allowed, and comes before us on a motion to dismiss for want of jurisdiction.

The State Supreme Court delivered no opinion in affirming the decree denying the petition to vacate, and the record discloses no title, right, privilege or immunity specially set up or claimed under the Constitution or apy law of the United States, which was denied by the decision; nor any assertion of an infraction of the Fourteenth Amendment, or any provision of the Constitution. But it is said that by necessary intendment the validity of an act of the general assembly of Florida of May 30, 1901, was drawn in question as repugnant to the Constitution of the United States, and its validity sustained. The act referred to provided that section 970 of the Revised Statutes of Florida was thereby amended so as to read: "Any and all judgments, decrees and orders heretofore or hereafter

rendered in causes where the disqualifications appear of record in the cause, shall be void, but where the disqualification does not so appear, they shall not be subject to collateral attack." Session Laws, Florida, 1901, p. 39.

The contention is that the judgment of the Supreme Court proceeded upon this act, which was invalid, if so applied, because *ex post facto*, and that, therefore, this court has jurisdiction, inasmuch as the validity of the act was thus drawn in question and its validity sustained. Yet no definite issue as to the validity of that statute was distinctly deducible from the record, no decision in favor of its validity appeared therefrom, and the judgment might have rested on grounds not involving its validity.

Whether the Supreme Court of Florida, if it sustained the decree of the Circuit Court in denying the petition on either of the grounds set up in defence, committed error cognizable here, or whether the act referred to was applied as asserted in contravention of the Constitution of the United States, we are not called on to consider, since we do not find that any Federal question was so raised, on the petition or in the proceedings thereunder, at the proper time and in the proper way, as to give us jurisdiction under section 709 of the Revised Statutes. *Mutual Life Insurance Company* v. *McGrew*, 188 U. S. 291, 307, 308; *Powell* v. *Brunswick County*, 150 U. S. 433; *Sayward* v. *Denny*, 158 U. S. 180.

Writ of error dismissed.

True copy.

Test:

Clerk Supreme Court, U. S.